

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
) MB Docket No. 16-357
Entercom License, LLC) Facility ID No. 65483
Applications for Renewal of License for Station) File Nos. BRH-20050728AUU
KDND(FM), Sacramento, California) and BRH-20130730ANM

**PETITION TO ENLARGE ISSUES
BY
MEDIA ACTION CENTER AND SUE WILSON**

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MICHAEL COUZENS LAW OFFICE

6536 Telegraph Avenue, Suite B201
Oakland, CA 94609

Tel. (510) 658-7654
FAX (510) 654-6741
cuz@well.com

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SUMMARY OF THE ARGUMENT

Because stations in Entercom Sacramento operated under the same management, practices, and resource constraints, there is no reason to exclude the other stations in the cluster from the renewal issues already designated for hearing – stations KUDL (FM) , Facility ID 65889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID11281. All these station have renewal application accepted for filing but not granted. Issues are needed to determine whether or not they have served the public interest during the renewal term, so as to be granted renewal.

Our second point of enlargement centers on the failure of HDO to put forth an issue of character qualification based on the facts already adduced.

The third area of requested enlargement was a reporting violation. By not reporting the terms of the settlement agreement of the lawsuit with plaintiffs, which included agreement to withdraw the decedent's family's complaint at the FCC, Entercom Sacramento failed to report, in violation of Sec. 73.3588 of the Rules.

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PETITION TO ENLARGE ISSUES

Media Action Center and Sue Wilson, by their attorney, here petition to enlarge issues in this proceeding. This petition is filed pursuant to Section 1.229 of the Rules and Regulations, within fifteen days of the publication of a summary of the Hearing Designation Order¹ in the Federal Register, 81 FR 94371-94374, December 23, 2016.

A. SUMMARY OF THE ARGUMENT

Based principally on the same facts adduced by the Commission to support the original designation, petitioners submit that additional issues are needed as a matter of fact, policy, and law. Specifically, the foolish on-air contest stunt that resulted in the negligent homicide death of Jennifer Lea Strange flowed from an abandonment of oversight and responsibility, not by KDND staff, but by a completely intertwined, interconnected and mutually organized and managed entity known as Entercom Sacramento License, LLC.² The special verdict in the civil case in Sacramento

¹ FCC 16-153, released on October 27, 2016 (hereinafter, HDO).

² “The original applicant was Entercom Sacramento License, LLC, a wholly-owned subsidiary of Entercom Communications Corp. (“Entercom Corp.”)” HDO at fn. 1. The HDO pervasively and confusingly conflated the two entities by using the shorthand for both, “Entercom Corp.”

Superior Court answered the question “Was Entercom Sacramento negligent?” The answer: “Yes.”

Because stations in Entercom Sacramento operated under the same management, practices, and resource constraints, there is no reason to exclude the other stations in the cluster from the renewal issues already designated for hearing – stations KUDL (FM) , Facility ID 65889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID11281. All these station have renewal application accepted for filing but not granted. On the facts known from the HDO and elsewhere, issues are needed to determine whether or not they have served the public interest during the renewal term, so as to be granted renewal.

Our second point of enlargement centers on the failure of HDO to put forth an issue of character qualification, or disqualification, based on the facts already adduced. Petitioners had requested an issue of basic character qualification, and this was rejected in fn. 122 of the HDO. We believe the explanation for that exclusion is unpersuasive, and we ask that a character issue be added as it concerns Entercom Sacramento.

The third area of requested enlargement was a reporting violation. By not reporting the terms of the settlement agreement of the lawsuit with plaintiffs, which included agreement to withdraw the decedent's family's complaint at the FCC,

Entercom Sacramento failed to report, in violation of Sec. 73.3588 of the Rules.

B. NEGLIGENCE, INATTENTION AND LACK OF OVERSIGHT WERE PERVASIVE ACROSS THE FULL SACRAMENTO CLUSTER

Radio broadcasting has been transformed since 1996, when the Telecommunications Act of 1996 directed the sunset of all numerical restrictions on nation-wide radio ownership, Public Law 104-104, at Sec. 202(a), 110 Stat. 110. There have emerged a handful of group owners, acquiring as many as 100 stations, or more.³ Their business model is not mysterious. Local stations are grouped in clusters to be co-managed by a single hand, typically a vice president, charged with consolidating operations, eliminating duplication and, so far as possible, maximizing revenue and minimizing costs. Compensation of staff is closely tied to market performance, whether market rank or quarterly ratings. Entercom Sacramento was such a station cluster, which also happened at the time to be within the administration of a common subsidiary, Entercom Sacramento, LLC. It shared a common office facility,⁴ indeed even shared the lunch room where the notorious contest was staged.⁵

Petitioners submit that within this cluster, through a combination of inattention and cost pressure, two core licensee duties completely atrophied to the point of non-existence: (1) the duty to assure licensee compliance with FCC rules and policies; and (2) the duty of the licensee to maintain oversight and control. While the homicide

3 See Ownership Report BOS-20151222BAS for Entercom Communications Corp. (97 stations).

4 Attachment A, Declaration of Sue Wilson.

5 Attachment B, Deposition of John Geary (excerpt).

by negligence of Ms. Strange is indeed a singular event demanding close attention, the licensee failure was much broader:

It was entirely foreseeable that uninformed employees would be likely to violate policies – it was only a question of time until it happened. The only matter that could not have been foreseen was the precise form the misconduct would take.

Walton Broadcasting Inc. (KIKK), Tucson, Arizona, 78 FCC 2d 857 (1980), at 869.

The HDO presents a devastating overview of the policy awareness vacuum and absence of oversight within the Sacramento cluster. The cluster essentially was on its own in matters of FCC compliance, because Carmela Masi, the corporate official in Pennsylvania assigned to this task by penny-pinching management, had a crushing work load (HDO fn. 239). Unable to respond to the particulars of individual inquiries, she generally told station personnel to use their best judgment (HDO para. 71).

At the cluster level, Robin Pechota was promotions director. At trial she testified that the hosts often ran contests without any notice to her, much less approval, or made snap decisions without vetting the contests with legal, HDO, para. 77. Her duties involved substantial matters other than contests. As she testified, “I was very busy.” *Id.* John Geary, vice president and Sacramento Market Manager, did not implement compliance safeguards or supervise [station manager] Weed and Pechota when it came to contests, HDO para. 72. “I do not have day-to-day involvement with contests or promotions at Entercom.” HDO at 76. He testified he

believed those chores would be carried out by the Entercom legal department (i.e. Ms. Masi in Pennsylvania), HDO para. 72. The HDO concludes: “Geary, Weed and Pechota's detachment from the Contest operations raises a serious question as to whether Entercom simply abdicated supervision of the Show's contest activities in light of the Show's high rating and resulting contribution to the licensee's financial bottom line.” (HDO para. 79). A declaration by John D. Geary⁶ notes that he supervised 130 employees “and all facets of the operations of six radio stations owned by Entercom Sacramento LLC,” (p. 2). He depicts an almost hermetic isolation of this unit in all facets of the business from the nominal mother ship in Pennsylvania.

In its opposition to the petition to deny the renewal of KDND, Entercom License LLC stated that “the jury found in favor of Entercom (Licensee's parent) on all claims, which were grounded on alleged negligence in Entercom's contest standards and policies.” This claim is at least disingenuous, if not downright deceptive. The jury found⁷ in Question 3: Was Entercom Communications Corp. negligent?” Ans.: “No.” On Question 1, “Was Entercom Sacramento negligent?” The answer was: “Yes.” Question 2: “Was Entercom Sacramento's negligence a substantial factor in causing harm to Jennifer Strange?” The answer was: Yes.” This apparently deliberate confusion by the Entercom parties carried over to the HDO, which gave the two entities the same short-hand name, “Entercom Corp.” fn. 1.

6 Attachment C, Declaration of John D. Geary, June 26, 2008.

7 Attachment D hereto, “Special Verdict.”

That the six stations were collectively remiss, and collectively culpable also is shown by the release form that was used (unsuccessfully) for Ms. Strange and the other contestants, Attachment E. It collectively releases six stations by named call sign, not just KDND.

C. BASED ON THIS RECORD, THE COMMISSION HAS AUTHORITY UNDER SECTION 309(K) TO DESIGNATE RENEWALS OF ALL THE SACRAMENTO CLUSTER STATIONS FOR HEARING.

There is a strange disconnect in the Hearing Designation Order between the sweeping indictment of corporate malfeasance and the narrow decision to add issues regarding only the KDND renewal. The reasoning is not entirely clear, but may be inferred from a Memorandum Opinion and Order, *Entercom License LLC* [the “Westborough Decision”], rejecting renewal challenges to Entercom stations in Massachusetts, New York State and Washington State, FCC 16-141 released on October 27, 2016. This was done with full Commission awareness of the HDO herein and was released on the same day. The Commission claimed in fn. 13 that it is limited to consideration of the licensee's operation of the station for which renewal is sought, based on 47 U.S.C Section 309(k)(1). The discussion claims to have located a bar to any cross-renewal use of adverse findings, based on the phrase *with respect to that station* [Commission's emphasis].

We believe this reading of Section 309(k) is wrong. The Section was added by the Telecommunications Act of 1996, in a revision the main purpose of which was to

foreclose consideration of competitors during the renewal process. The Section provides:

(k) Broadcast Station Renewal Procedures

(1) Standards for renewal. – If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license –

- (a) the station has served the public interest, convenience and necessity;
- (B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and
- (C) there have been no other violations of the licensee of this Act or then rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

The phrase, “with respect to that station” furthered the Congressional purpose of barring comparative renewals, where the incumbent previously might have been adjudged versus a competitor, and making sure that the licensee's record alone was at issue.⁸ It harmonized and made consistent all the provisions of 309(k). As is evident from the choice of words, it did not bar consideration of “serious violations” by the licensee or “a pattern of abuse” by either -- the station or the licensee.

This reading is valid from the face of the Statute. But it is confirmed by the legislative history. The conference report, No. 104-458, January 3, 1996, noted the choice of then Section 204 between Senate and house versions. Under the Senate version

A broadcaster would apply for its renewal, and the Commission would grant

⁸ 309(k)(4) “Competitor Consideration Prohibited – In making the determination specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.”

such renewal, if during the preceding term of its license the station has served the public interest, convenience and necessity, has not made any serious violations of the Communications Act or of the Commission's rules, and has not, through other violations, shown a pattern of abuse.

Note that each issue in the Senate version is “station” specific. The conferees adopted the House version, which provided in Section 305:

Subsection (k) allows for Commission consideration of the incumbent broadcast licensee without the contemporaneous consideration of competing applications [the *with respect to that station* restriction]. Under this subsection, the the Commission would grant a renewal application if it finds that the station, during its term, had served the public interest, convenience and necessity; there had been no serious violations *by the licensee* [emphasis added] of the Communications Act or Commission rules, and there had been no other violations of the Communications Act or Commission rules which, taken together, indicate a pattern of abuse.

In short Congress preferred and adopted the version that recognized valid and broad inquiry into licensee violations and into station or licensee patterns of abuse.

The record set forth in the HDO amply shows both serious violations, resulting in a negligence verdict against the Sacramento group collectively, and a group-wide outage of oversight and control. Accordingly issues are needed to determine whether or not the pending renewal applications should be granted for KUDL (FM) , Facility ID 65889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID1128.⁹

The HDO found that the Entry of Judgment upon a jury verdict and the facts

⁹ No doubt Entercom would like to have the Commission revert to “square one” and adduce facts through a Notice of Inquiry, then proceed with a separate hearing designation order, or separate hearing pursuant to Section 312 of the Act. No law or policy requires this result. Entercom is thoroughly on notice of the core allegations, and would have the full opportunity to show with respect to any station why its treatment under the law should differ. Judicial economy also favors the adduction of evidence here not six times, but only once.

therein established in the trial by sworn testimony were a basis to designate the public interest question for hearing, HDO para. 31. That the verdict found Entercom Sacramento, the stations collectively, negligent and such negligence a proximate cause of Ms. Strange's death should be sufficient for the same issues to be applied across the group.

In a group owner case involving a kidnapping hoax news story, the Commission, revoking the license, stated:

The misconduct can be traced directly to the licensee's failure to require promotion formats be approved, its failure to transmit and to emphasize the substance of its policies to its station manager, its failure to assure that the manager understood its policies, its failure to check and see if he transmitted the information to on-the-air personnel, and its failure to understand and inculcate the most elementary principles of public trusteeship.

Walton Broadcasting Inc. (KIKX), 78 FCC 2d 857 (1980) at 870.¹⁰ Here it was only fortuitous that the documented lapses in oversight and control in Entercom Sacramento led to only one negligent homicide. That other stations are implicated here is consistent with Section 309(k) because of the near total overlap in facts and circumstances.¹¹

10 See *Trustees of the University of Pennsylvania WXPB (FM)*, 69 FCC 2d 1394 at 1396-7: "Moreover the Commission has long held that licensees are responsible for their employees' conduct since '[o]nly by holding a licensee responsible for the operation and management of the station, and only by insistence that the reins be held by the licensee, can there be any reasonable assurance of responsible station operation and management.'" [citations omitted]

11 The Westborough case was decided correctly because the petitioner failed to produce evidence that would link those stations with the misconduct documented as widespread in Entercom Sacramento. At the same time, we strongly disagree with the refusal to consider indecency complaints where they involved Entravision Sacramento stations, see HDO para. 28. There it is said, "Section 309(k)(1) limits the scope of our review to the station for which license renewal is being considered." As discussed above in detail, this interpretation of Section 309(k) is wrong and the language should be vacated.

D. AN ISSUE OF BASIC CHARACTER QUALIFICATION IS WARRANTED AS TO THE SIX STATIONS.

Our Petition to Deny sought a basic qualifying issue against Entercom, contending that it lacked the character qualifications to remain a Commission licensee. This was based on specific allegations, now close to being well established as fact, that (A) KDND management knew they were promoting a deadly stunt but did not tell contestants (pp. 7-90; (B) Entercom staff ignored Ms. Strange and other contestants' illnesses (pp. 9-10); Entercom's corporate structure favors ratings over safety (pp. 11-12).

The Commission denied this relief in fn. 122. There the Commission repeats its crabbed, self-limiting and incorrect gloss on 47 U.S.C. Section 309(k)(1). It then states: “The limited scope of our review of renewal applications under the Act does not include consideration of questions of character that do not involve serious violations of the Act or Rules.” Question: Here, where a compliance vacuum led to a negligent homicide, what was not serious?

In response to the allegations regarding character qualifications, Entercom argued that adjudicated civil negligence is not a category of “non-FCC behavior of concern” that is taken into account in any character analysis, HDO para. 13.¹² The HDO, by confining itself to renewal issues, does not specifically reject this claim. But given the intermediate findings here, the claim cannot stand: “In view of the fact

¹² “Moreover, Entercom points out that at the Trial, licensee parent Entercom Corp. was found not negligent by the jury.” *Id.* As we have discussed, the HDO has largely been guided by this bald deception.

that the Contest was conducted and aired over a broadcast facility licensed by this Commission, we believe that the record calls into question whether Entercom has operated the station in the public interest,” HDO at 34, see paras. 31-34 *passim*.

The Commission's 1986 Character Policy Statement¹³ noted as a general proposition on attribution of employee misconduct: “Merely standing back and waiting for disaster to strike or for the Commission to become aware of it will not insulate corporate owners from the consequences of misconduct,” *Id.* At 1218. Turning to the question of whether misconduct at one station can be predictive of behavior at a group licensee's other stations, the Commission declined to adopt any such presumption. However, “some behavior may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license,” *Id.* 1223. This was considered to be a question of fact to be resolved on a case-by-case basis. Petitioners submit that, for the Entercom Sacramento group, operations were so intertwined, the abdication of compliance so pervasive and well documented, and the jury verdict of collective guilt in a negligent homicide so clear that addition of a character issue for this group is necessary and appropriate. Because the same factual record is absent with respect to non-Sacramento Entercom stations, the test for for a character issue as to them is not met.

If no character issue is added for Entercom Sacramento, the perpetrators are

¹³ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (*Character Policy Statement*)

likely to have escaped this debacle with little or no cost. The monetary judgment in Sacramento Superior Court was paid for by insurance.¹⁴ In a pure renewal setting, the Commission invites Entercom to “to raise additional facts and circumstances, including those not related to the Contest, that may be relevant to our public interest determination.” HDO para. 82. There is no precedent for weighing or conducting an overall balancing, as between a wrongful death on the one hand, and on the other hand the use of unsold station time to run PSA's or the sponsorship of a job fair or a charity drive. Rest assured that the full might of a publicly traded company will be deployed, though as many appeals and successions of judges and Commissioners as necessary, to assure that the final renewal sanctions are no big irritant. A character issue against Entravision Sacramento is warranted based on overwhelming evidence, and may be the only way to convince the regulatee that compliance is a necessary part of doing business as a licensed enterprise.

The public and the Commission were granted a rare window into the driving force and culture of Entravision Sacramento. It came in the deposition of Matthew Carter, one of the producers.¹⁵ He related the events of the meeting, the day after Ms. Strange death was confirmed, in which John Geary terminated programming staff.

14 “Except as described below, there have been no material developments relating to the legal proceedings described in our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the Securities and Exchange Commission on February 26, 2009:

During January 2007, a suit seeking various damages was filed against us relating to an on-air contest. The claims, which were settled in October 2009, were fully covered by our insurance policies.” Entercom Communications Corp. form 10Q for quarter ended 9/30/2009, filed with SEC.

15 Excerpt Attachment F hereto.

A. He said – he passed out checks; said our employment with Entercom is now over. He was very vague. I remember right then Trish asked, “So you're blaming us for all of this?” And he stuck to what he was saying, instead of answering the direct question and whatnot.”

* * *

A. Maney, in an attempt to almost beg, said, “You can't fire us before the book comes out. You just take a look at the book. You can't fire us now.”

And so Jennifer Lea Strange, by the jury found not to have contributed to her injury by her own negligence, perished at the hand of a Company where its workers could not imagine any ultimate value that surpassed the rating book, real life imitating art.¹⁶

E. AN ISSUE IS NEEDED TO EXPLORE A 47 C.F.R. SECTION 7.3588 REPORTING VIOLATION

After the jury verdict adverse to Entercom Sacramento, the defendants entered into a settlement with the successful judgment creditors, based on the family's acceptance of “payment or performance other than specified in the judgment.” (HDO para. 10) In furtherance of the agreement, the family withdrew their complaint at the Commission, by letter of November 9, 2010, HDO fn. 38. The substance of the complaint no longer is available in the record, and the terms of this agreement were never reported to the Commission, as required by Sec. 73.3588 of the Rules.¹⁷ The

16 182. A BANK OF FOUR TELEVISION MONITORS

It is 7:14 p.m. Wednesday, July 9, 1975, and we are watching the network news programs on CBS, NBC, ABC, and UBS-TV. The AUDIO is ON: headshots of WALTER CRONKITE, JOHN CHANCELLOR, HOWARD K. SMITH, HARRY REASONER, AND JACK SNOWDEN, SUBSTITUTING FOR HOWARD BEALE, interspersed with tapes of the horrible happening at UBS the day before, flit and flicker across the four television screens. Television continues relentlessly on.

NARRATOR (OVER): This was the story of Howard Beale who was the network news anchor on UBS-TV, the first known instance of a man being killed because he had lousy ratings.

- Script of *Network*, revised 12/31/1975

17 § 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

peculiar circumstances here are that the defendants, possibly having points for an appeal, cut off that process by obtaining assent to a cash settlement. Part of the settlement package was the withdrawal of plaintiff's broadcast license related complaint at the Commission. The confidentiality agreement as to the settlement benefited only the defendants, served no valid business purpose, and became a means of evading Sec. Sec. 73.3588. Entercom Sacramento should be required to disclose all the terms of the settlement and submit the showings required by rule. A reporting violation issue is needed.

F. ISSUES REQUESTED

(j) To determine whether Entercom Sacramento, a subsidiary of Entercom, failed to properly train and exercise appropriate supervision of staff with respect to FCC compliance matters at stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);

(a) Whenever a petition to deny or an informal objection has been filed against any application, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

- (1) A certification that neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny;
- (2) The exact nature and amount of any consideration received or promised;
- (3) An itemized accounting of the expenses for which it seeks reimbursement; and
- (4) The terms of any oral agreement related to the dismissal or withdrawal of the petition to deny.

(k) To determine, in light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License, LLC operated Stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM) in the public interest during the most recent license term;

(l) To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom's applications for renewal of licenses should be granted, as follows:


KUDL (FM)	File No. BRH-20130730ANC
KIFM (AM)	File No. BRH-20130730ANG
KKDO(FM)	File No. BRH-20130730AND
KRXQ (FM)	File No. BRH-20130730ANI
KSEG (FM)	File No. BRH-20130730ANK.

(m) To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License LLC possesses the necessary character attributes of reliability and legal compliance to be a Commission licensee of Stations KDND (FM), KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);

(n) To determine whether Entercom License LLC violated Section 73.3588 of the Rules, by failing to report to existence or terms of a settlement agreement, whereby judgment creditors in the case of *William A. Strange et al. v. Entercom*

Sacramento LLC et al. agreed to dismiss their FCC filing pending against the defendants.

Respectfully submitted,



Michael Couzens,
*Attorney for Media Action Center
and Sue Wilson.*

MICHAEL COUZENS LAW OFFICE

6536 Telegraph Avenue, Suite B201
Oakland, CA 94609

Tel. (510) 658-7654
FAX (510) 654-6741
cuz@well.com

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